

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 102416.2 (Title)

Specific Purpose/Factual Basis:

This section title, Reporting Requirements, is adopted to include within it reporting requirements for family child care home licensees.

Section 102416.2(a)

Specific Purpose:

This section specifies when a licensee or applicant must report to the Department if they become licensed or certified through a foster family agency as a foster family home.

Factual Basis:

Family child care home licensees are permitted to also be licensed or certified for foster care. This section is necessary to enhance the health and safety protections of children in care by enabling the Department to coordinate complaint investigations with the agencies that license or certify foster homes.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Section 102416.2(b)

Specific Purpose:

This section specifies that a licensee must report to the Department any changes in the household composition including when adults move in or out of the home and when children living in the home turn 18 years old.

Factual Basis:

This section is necessary to enable the Department to follow up and ensure that criminal background checks are completed prior to initial presence in the licensed home or as soon as possible after a child living in the home turns 18 years of age.

Criminal background checks are required pursuant to Health and Safety Code Section 1596.871. Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Section 102416.2(c)

Specific Purpose:

This section specifies the manner and time frames for reporting events specified in Sections 102416.2(a) and (b).

Factual Basis:

This section is necessary to explain how and when family child care homes licensees report the information specified in Sections 102416.2(a) and (b).

Section 102416.2(d) (Renumbered to Section 102416.2(f) following the public hearing)

Specific Purpose:

This section specifies the timeframes for the licensee to report an incident, injury, act or event to parents/authorized representatives of a child in care.

Factual Basis:

This section is necessary to implement the requirements of Health and Safety Code Section 1597.467(a) as added by AB 685. This section establishes reporting requirements for family child care home licensees whenever they have reason to believe that a child in their care has suffered any injury, or has been subjected to any act of violence.

Final Modification:

Following the public hearing, Section 102416.2(d) was renumbered to Section 102416.2(f) and amended for clarity. In addition to renumbered Section 102416.2(d)(1), renumbered Section 102416.2(f) clarifies the timeframes for reporting any injury to a child in care to the parent(s)/authorized representative(s) of the child in care. This section is necessary to implement the requirements of Health and Safety Code Section 1597.467(a) as added by AB 685.

Section 102416.2(e) (Renumbered to Section 102416.2(d) following the public hearing)

Specific Purpose:

This section provides licensees with directions and timeframes for reporting unusual incidents/injuries to the Department.

Factual Basis:

This section is necessary to provide instructions to licensees regarding how and when licensees must report incidents, injuries, acts or events to the Department pursuant to Health and Safety Code Section 1597.467(b).

Form LIC 624B (6/03), Unusual Incident/Injury Report – Family Child Care Home, is incorporated by reference and is not printed in the California Code of Regulations (CCR) or CDSS' Manual of Policies and Procedures (MPP) because it would be cumbersome and impractical; however, it is available from CDSS and CDSS' Internet Page.

Final Modification:

Following the public hearing, Section 102416.2(e) was renumbered to Section 102416.2(d) for clarity and consistency. Also a cross-reference was corrected as a result of the renumbering.

Section 102416.2(e)(1) through (e)(1)(I) (Renumbered to Sections 102416.2(d)(1) through (d)(1)(I) following the public hearing)

Specific Purpose:

This section specifies the timeframes for licensees to report an incidents, injuries, acts or events to the Department.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1597.467. Existing family child care regulations do not require family child care home licensees to report to the Department incidents that occur during the provision of child care. Prior to the passage of AB 685, family child care home licensees were the only community care licensees that had no injury or unusual incident reporting requirements. For this reason a policy decision was made to add additional reporting requirements for family child care home licensees to further protect the health and safety of children in licensed care. In addition to the reporting requirements specified in Health and Safety Code Section 1597.467 the following events must be reported to the Department: 1) Fires or explosions occurring in or on the premises of the family child care home, 2) Epidemics or suspected outbreaks of communicable diseases involving two or more children, 3) Poisonings, 4) Catastrophes.

For more than 46,000 family child care homes licensed by the Community Care Licensing Division in California, the Department would often learn of serious or unusual incidents from external sources, usually the media or law enforcement. This section will ensure consistency in reporting for all community care facility categories and provide greater protections for children in care.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Sections 102416.2(e)(1) through (e)(1)(I) were renumbered to Sections 102416.2(d)(1) through (d)(1)(I) respectively for clarity and consistency.

Section 102416.2(e)(2) through (e)(2)(G) (Renumbered to Sections 102416.2(d)(2) through (d)(2)(G) following the public hearing)

Specific Purpose:

This section requires licensees to include specific information when reporting unusual incidents/injuries to the Department.

Factual Basis:

This section is necessary to ensure the Department is given adequate information about the unusual incidents/injuries to determine if follow up by the Department is necessary.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Sections 102416.2(e)(2) through (e)(2)(G) were renumbered to Sections 102416.2(d)(2) through (d)(2)(G) respectively for clarity and consistency.

Section 102416.2(f) (Renumbered to Section 102416.2(e) following the public hearing)

Specific Purpose:

This section requires a family child care home licensee to keep a copy of the LIC 924B, Unusual Incident/Injury Report – Family Child Care Home or the letter used to report the incident to the Department, in the child's file at the family child care home.

Factual Basis:

This section is necessary to ensure that the licensee keeps a copy of the unusual incident/injury report in the child's file for review by the parent and the licensing agency.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Section 102416.2(f) was renumbered to Section 102416.2(e) for clarity and consistency.

Section 102416.2(g)

Specific Purpose:

This section requires the licensee to also report any physical, sexual, or emotional abuse of any child in care to local law enforcement or children's protective services.

Factual Basis:

This section is necessary because Penal Code Section 11166 mandates that all child care custodians, including family child care home licensees, report all suspected child abuse to law enforcement or child protective services. While the Department establishes the authority for licensees to report suspected physical or sexual abuse, injuries and unusual incidents to the Department, they are still mandated by this Penal Code Section to report suspected child sexual or physical abuse to law enforcement or child protective services.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Section 102416.2(g) was amended to correct a cross-reference as a result of the renumbering of Section 102416.2(e)(1)(E).

Section 102416.2(h)

Specific Purpose:

This section requires the licensee to report fires or explosions occurring in or on the premises of the family child care home to the local fire authority or to the State Fire Marshal within 24 hours.

Factual Basis:

This section is necessary to ensure that the family child care home licensee notifies the appropriate authorities of fires or explosions in or on the premises of the family child care home, to ensure that the necessary safety precautions are in place.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Section 102416.2(h) was amended to correct a cross-reference as a result of the renumbering of Section 102416.2(e)(1)(F).

Sections 102416.2(i) et seq.

Specific Purpose:

These sections require the licensee to report to the local health officer epidemics or suspected outbreaks involving two or more children of any communicable disease as listed in Title 17, Section 2500.

Factual Basis:

These sections are necessary because the California Code of Regulations, Title 17, Section 2500, mandates that all specified outbreaks involving two or more children must be reported to the local health officer. These sections clarify for licensees that they are mandated by the above cited law to report outbreaks to the local health officer as well as the Department.

Health and Safety Code Section 1596.81 provides the Department the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Section 102416.2(i) was amended to correct a cross-reference as a result of the renumbering of Section 102416.2(e)(1)(G).

Section 102416.3

Specific Purpose/Factual Basis:

This section is adopted to include requirements that need to be followed when making alterations to existing building or grounds of a family child care home.

Sections 102416.3(a) through (a)(1)(F)

Specific Purpose:

These sections specify when and under what circumstances the licensee must report changes in "off limits" areas or alterations to the family child care home (building) and grounds.

Factual Basis:

These sections are necessary to further protect the health and safety of children in licensed care because it has been the Department's experience that the first time the licensing agency

becomes aware of the installation of a pool or changes to the home is either when a random visit is made to the facility, an incident occurs, or a complaint is received.

Health and Safety Code Section 1596.81 provides the Department with the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, proposed Section 102416.3(a)(1)(F) was amended for clarity.

Section 102416.3(a)(2) (Renumbered to Section 102416.3(b) following the public hearing)

Specific Purpose:

This section establishes the Department's authority to require a licensee to obtain a building inspection by a local building inspector or a fire clearance to ensure that no hazard to the health and safety of children exists as a result of the alteration, addition or construction.

Factual Basis:

This section is necessary because it has been the Department's experience that alterations to some family child care homes have been completed without a building permit and appear to be unsafe. This section allows the Department to require a building permit or fire inspection in those situations.

Health and Safety Code Section 1596.81 provides the Department with the authority to promulgate regulations necessary to protect the health and safety of children in care.

Final Modification:

Following the public hearing, Section 102416.3(a)(2) was renumbered to Section 102416.3(b) for clarity.

Section 102419(d)

Specific Purpose:

This section is adopted to require a family child care home licensee to provide to the parent/authorized representative of children in care the Family Child Care Consumer Awareness Information, LIC 9212 (2/05). The licensee must provide the form as part of the admissions procedure when a child is accepted into care in the family child care home.

Factual Basis:

This section is necessary to ensure that parents/authorized representatives have information about licensed child care. The form provides parents/authorized representatives with a health and safety checklist for the family child care home, a list of what the family child care home should provide, a list of suggested topics for discussion with the licensee, explanation of the licensing agency's responsibilities and how to file a complaint with the licensing agency.

Health and Safety Code Section 1596.81 provides the Department with the authority to promulgate regulations necessary to protect the health and safety of children in care.

Form LIC 9212 is incorporated by reference and is not printed in the CCR or CDSS' MPP because it would be cumbersome and impractical; however it is available from CDSS and CDSS' Internet Page.

Final Modification:

Following the public hearing, form number LIC 9212 was updated and therefore the revision date was changed for consistency.

Sections 102419(e) through (k) Renumbered from Sections 102419(d) through (j) respectively

Specific Purpose:

These sections are renumbered in order to accommodate the adoption of new Section 102419(d). New Section 102419(e) is amended to repeal obsolete language and add the latest revision date of form LIC 995E; it is also amended as well as new Section 102419(e)(1) to include the Family Child Care Consumer Awareness Information, LIC 9212 (2/05), to the documents that the licensee must give to the parents/authorized representatives at the time a child is accepted into the facility. New Sections 102419(e)(3)(A), (B), (C), (j) and (k) are amended to update cross references. New Section 102419(i)(2) is adopted to allow licensees to provide the Family Child Care Home Explanation of Removals/Exclusions and Reinstatement LIC 995D (5/03), to a child's parent/authorized representative.

Factual Basis:

The renumbering is necessary to accommodate the adoption of new Section 102419(d). New Section 102419(e) is necessary to explain when the licensee must provide the Family Child Care Consumer Awareness Information, LIC 9212 (2/05), to the child's parents/authorized representatives. New Section 102419(i)(2) is necessary to provide information to assist the licensee in explaining the criminal record exemption process to the parents/authorized representatives of children in care.

Health and Safety Code Section 1596.81 provides the Department with the authority to promulgate regulations necessary to protect the health and safety of children in care.

Form LIC 995D is incorporated by reference and is not printed in the CCR or CDSS' MPP because it would be cumbersome and impractical; however it is available from CDSS and CDSS' Internet Page.

Final Modification:

Following the public hearing, forms number LIC 995A and LIC 9212 were updated and therefore the revision dates were changed for consistency in renumbered Sections 102419(e) and (e)(1).

Section 102423(b)

Specific Purpose:

This section is amended to clarify that the education and awareness handout is the Family Child Care Consumer Awareness Information, LIC 9212 (2/05).

Factual Basis:

This section is necessary to clarify that the education and awareness handout is the Family Child Care Consumer Awareness Information, LIC 9212 (2/05). This form provides parents/authorized representatives with a health and safety checklist for the family child care home, a list of what the family child care home should provide, a list of suggested topics for discussion with the licensee, explanation of what the licensing agency's responsibilities are, and how to file a complaint with the licensing agency.

Final Modification:

Following the public hearing, form number LIC 9212 was updated and therefore the revision date was changed for consistency.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 685 (Wayne), Chapter 679, Statutes of 2001.

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, but not on local school districts. There are state mandated local costs that require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would lessen any adverse impact on small business.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on August 17, 2005, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from July 1, 2005 to 5:00 p.m. August 17, 2005:

- Arlyce Currie on behalf of BANANAS, Oakland
- Nancy Wyatt, Reseda
- Edward Bolen, Staff Attorney/Senior Policy Analyst, Child Care Law Center, San Francisco
- Rosie Kennedy, Family Child Care Services and Organizing Coordinator, United Child Care Union/AFSCME, Oakland
- S. Alecia Sanchez, Senior Policy Advocate, Children's Advocacy Institute, Sacramento

The comments received and the Department's responses to those comments follow.

Arlyce Currie on behalf of BANANAS submitted the following comment: (Comment #1)

1. Comment:

"Staff at BANANAS, the Child Care Resource & Referral agency for Northern Alameda County, reviewed the proposed regulations and find one section confusing. 102416.2 (d) stipulates 'Whenever a child in the licensee's care has suffered any injury or has been subjected to any act of violence, or has been involved in any event that is required to be reported to the Department as specified in Section 102416.2(e)(1)...' Using the word 'any' in these three instances and then later listing the actual instances in which reports must be made may confuse a provider. Perhaps 102416.2(e) should come first so that the provider knows under what circumstances s/he is mandated to report and then state in the next subset to 102416.2 when the provider shall report to the parent/authorized representative."

Response:

The Department appreciates the opportunity to address your comments.

The Department agrees the use of the word 'any' in these three instances and then later listing the actual instances in which reports must be made may confuse a provider.

It is the intent of the Department that the licensee shall first notify the parent/authorized representative of any event or injury, to their child while in care on the same day the incident or injury occurs, including those that do not require medical treatment.

Proposed regulation Section 102416.2 has been revised to clarify the events that shall be reported to the Department, with timeframes and the events that shall be reported to the parent/authorized representative of the child in care with timeframes.

Subsection 102416.2(e) is moved to become Subsection (d), specifying what events shall be reported to the Department and the timeframes for reporting.

Subsection (e) (former Subsection (f)) requires the licensee to keep a copy of the letter or the Unusual Incident/Injury Report in the child's file at the family child care home.

New Section 102416.2(f) requires the licensee to report any injury to a child in their care to the parent/authorized representative, including injuries that do not require medical attention.

Nancy Wyatt submitted the following comments: (Comments #2 - 3)

2. Comment:

"*The proposed regulations appear to be in the best interest of children and families and most passages simply add regulations to enforce existing laws. *

"*Page 7, 102419 (d) (e) and (1):

"Page 1 (e):

"Page 2 (2), (f):

"Page 9 (b):

"Page 8 (i) and (2)

"*It is not advisable to include form version dates in the regulations, because forms are often revised. If the form were revised in the future, the regulations would not refer to the most current version of the form. For example, form LIC 995 A should be revised to include a receipt for form LIC 9212, and then the revision date will no longer be 8/02..

*"

Response:

The Department appreciates the opportunity to address your comments.

The rulemaking process pursuant to California Code of Regulations, Title 1, Section 20(c)(4), requires that the document is incorporated by reference into the regulations

and identifies the document by title and date of publication or issuance. Furthermore, in order to operate in the most efficient possible manner the Community Care Licensing Division's Website, www.cclld.ca.gov contains all the necessary licensing forms in the most current version available.

The Department agrees with your recommendation to include the LIC 9212, Family Child Care Consumer Awareness Information on the LIC 995A, Family Child Care Home Notification of Parents Rights as having been received by the parent/authorized representative of the child in care. The form is currently under revision.

3. Comment:

"Proposed Form LIC 9212:*

"* *Page 1, 2nd check box: *The reader will not know that small capacity homes may also care for 3 or 4 infants and that large capacity homes may also care for 4 infants, depending on the number of other children in care and their ages. It looks as though there is room for more detail. Please don't forget the kindergarten/elementary school option for a child under age 6 for additional children in care. If you have room, please say that a large capacity home should have an assistant present whenever it exceeds what a small capacity home can do...for example: when 5 children are present and 4 of them are under age 2. So many times, information about capacity simply states that large capacity providers need an assistant when they care for more than 8 children.. This could mean one caregiver with four newborns plus four children barely 24 months old, and this would not be advisable.

Response:

This is intended to provide a brief overview of complex capacity issues and is not intended to be all inclusive.

Regulation Section 102416.5 specifies for a small family child care home, the maximum number of children for whom care shall be provided, including children under age 10 who live in the licensee's home shall be one of the following:

- Four infants; or
- Six children, no more than three of whom may be infants.

For a large family child care home, the maximum number of children for whom care may be provided when there is an assistant provider in the home, including children under age 10, shall be twelve children, no more than four of whom may be infants.

Health and Safety Code Section 1597.44 specifies a small family child care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- No more than two infants are cared for during any time when more than six children are cared for.
- The licensee notifies each parent that the facility is caring for two additional school-age children and that there may be up to seven or eight children in the home at one time.
- The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

Health and Safety Code Section 1597.465 specifies a large family child care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- No more than three infants are cared for during any time when more than 12 children are being cared for.
- The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
- The licensee obtains written consent of the property owner when the family day care home is operated on property that is leased or rented.

When a provider is caring for up to eight or 14 children, the licensee must notify the parents of all children in care and provide the LIC 9150, Parent Notification Additional Children in Care. The parent is required to sign the receipt and the licensee must retain the receipt in the child's file. Please see Section 102416.5(c).

The LIC 9150 specifies the capacity limitations for both small and large family child care homes.

"* *Page 1, 5th check box:* As long as you are turning PUB 72 into a form, please take this opportunity to add the covered pool option to check box 5.

Response:

The Department agrees with your recommendation to add a pool cover to the LIC 9212, Family Child Care Consumer Awareness Information (previously known as the PUB 72) as an acceptable alternative to a fence. The LIC 9212 has been revised.

"* *Page 1, italicized section under the form title, 2nd sentence:*
'licensinig' is an error in spelling.

Response:

The Department is aware of the error in the spelling of the word "licensing" and it has been corrected.

"* *Page 2, left column, 4th bullet:* add 's' to 'Right.'

Response:

The Department agrees with your recommendation to correct the spelling error. The LIC 9212 has been revised.

"*Page 7 (e):* Please add passages to the regulations that are also to be included on form LIC 9212 that will clarify when an assistant is needed at a large capacity family child care home."

Response:

Regulation Section 102416.5(c) specifies when an assistant provider is required.

The LIC 9212, Family Child Care Consumer Awareness Information is intended to provide an overview of the staffing ratios under the heading "Health and Safety Checklist," second check box.

Edward Bolen, Staff Attorney/Senior Policy Analyst, Child Care Law Center, submitted the following comments: (Comments # 4 - 6)

4. Comment:

Section 102416.2(b)

"Section 102416.2(b) requires, in part, a licensee to report 'any change in household composition including adults moving in or out of the home.'. The purpose for this section, as described in the Initial Statement of Reasons, is to 'ensure criminal background checks are completed prior to initial presence in the home.' However, licensees are already required to obtain criminal background clearances for persons residing in the home pursuant to Health & Safety Code Section 1596.871(c) and 22

Cal. Code of Regulations 102370(d)). These sections of the statute and regulation are extraordinarily detailed regarding these requirements. This proposed regulation does nothing more than the statute and regulation to 'ensure' that those persons who are required to undergo criminal background checks do so, and goes far beyond what the Department is permitted to require of licensees.

"We are not aware of any authority that permits the Department to require licensees to report all changes to household composition. Such a requirement would appear to violate the civil liberties of the provider by obtaining unnecessary private information, and as such, would likely violate the Information Practices Act Information Practices Act of 1977, California Civil Code §§ 1798 – 1798.78. The Information Practices Act (IPA) governs the collection and disclosure of personal information by the state government. The IPA is broadly construed in favor of protecting privacy rights. Section § 1798.1 states that 'all individuals have a right of privacy in information pertaining to them,' and that 'the right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.' Therefore, 'it is necessary that the maintenance and dissemination of personal information be subject to strict limits.' In addition, § 1798.63 mandates that '[t]he provisions of this chapter shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution.'

"The IPA applies to the proposed regulations because the regulations involve 'personal information' being maintained by an 'agency,' as defined under the Act. Section 1798.3 (a) defines personal information as 'any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history..'. Under § 1798.14, '[e]ach agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.' (emphasis added.) There are numerous possible changes in household composition in which the personal information required by the proposed regulation is neither relevant nor necessary to accomplish a purpose of the Department.

"There is no requirement under the statute that persons 'moving in or out' of the home have clearances, nor is it permissible for the Department to require notification of all such activity. If the Department seeks to receive notification that each person newly 'residing' in the home who is required to undergo a criminal background check has done so, the regulation needs to be explicitly limited to this permissible purpose. Also, the time frame required in 102416.2(c) that requires such a report to be made the 'next business day' is unreasonable, given that the term 'resides' has not been defined by the Department, and that it often is not immediately clear to the licensee whether an individual, often a family member, is merely visiting or intends to 'reside' in the home.

"The Department may want to consider providing a definition of the phrase 'residing in the facility' so that it will be clear to licensees whether it is necessary to have a person

who is in the home for a limited period of time undergo a criminal background clearance, i.e., a child over age 18 who is in the home only during a summer school break, or an elderly family member who visits for a period of a month or two.

Response:

The Department appreciates this comment. However, it is the view of the Department that it is necessary to obtain information as to the presence of adult persons in the household in order to assure that proper background checks and fingerprints have been obtained from all persons present in the household who are subject to those requirements. Without information as to all persons who may be subject to those requirements, the Department will be unable to determine compliance with Health and Safety Code Section 1596.871.

Accordingly, we disagree that the reporting requirement would violate the Information Practices Act. In asking for the licensee to notify the Department of any change in household composition, the Department is seeking to receive notification as to all persons who may be required to undergo a criminal background check.

Health and Safety Code Section 1596.871(c)(1)(A) provides that, "Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility."

Because the statute requires the information be obtained prior to residence or employment, the regulation, in requiring notification within one day, does not impose any additional burden on the licensee.

5. Comment:

Section 102416.3

"This section requires a provider to notify the Department of planned alterations or additions to the facility prior to making such a change. It also attempts to provide the Department with authority to require a licensee to undergo an inspection by the local building inspector. Both of these requirements are problematic as they are unnecessarily confusing, do not clearly serve an authorized purpose of the Department, and likely are unenforceable as written.

"The Initial Statement of Reasons indicates that 'it has been the Department's experience that the first time the licensing agency becomes aware of the installation of a pool or changes to the home is either when a random visit is made to the facility, an

incident occurs, or a complaint is received.' As written, this provision requires licensees who are planning to make a significant investment in their home to notify the Department prior to moving forward with an addition or alteration. This requirement of advance notice to the Department suggests that the Department could require the licensee to obtain approval before the project can begin. We are not aware of any authority that would permit the Department to require prior approval for such changes, and question whether the Department may demand prior notice from the licensee, as required by the proposed regulation.

"The fact that alterations or additions are made to a family child care home is a concern only if those changes violate Community Care Licensing standards. If the Department seeks notification of alterations made to the facility in order to automatically trigger a visit to ensure the changes comply with licensing standards, it should be narrowly drafted to specifically state that a report of a change shall trigger a visit. The Department then must be responsible for conducting such visits. Given reductions in the Department's budget, it seems unlikely that the Department will be able to conduct a visit in every instance of a reported addition or alteration to a facility.

"If the Department seeks notification in order to simply be aware of the change so that any subsequent visit to the facility can include a review of the alternation or addition, the regulation should be narrowly drafted for that purpose, and licensees should be notified that the changes will be reviewed at a subsequent visit by the Department. If the Department determines at that visit that the changes result in a violation of licensing standards, appropriate action can be taken under current regulations.

"In addition to the problems with the prior notice element of the proposed regulation, the definitions for alteration and addition need clarity. While the list of examples in 102416.3(a)(1) provides some guidance, it is unclear when notification would be triggered for projects not listed. For example, does the term 'play equipment' include the construction of a sandbox? Similarly, the reference to 'off limits' areas of the home in 102416.3(a)(1)(f) is confusing. Community Care Licensing is not permitted to inspect areas of the family child care home in which child care does not take place; in fact, analysts are prohibited from going into those areas. See Cal. Health and Safety Code § 1597.55(g). We believe the Department does not have the authority to require notification of alterations to those areas in which it is not authorized to conduct inspections.

Response:

The Department has a general duty to assure that facilities are safe (Health and Safety Code Sections 1596.852 and 1597.52). The factors listed in Section 102416.3(a)(1) are all relevant to this goal. Under the doctrine of ejusdem generis, the listed changes are illustrative of the sort of changes that a licensee is required to report, and, in our view, provide sufficient guidance for the licensee in determining whether to report a change.

The Department also appreciates the comment concerning the reference to "off limits" areas of the home as mentioned in the proposed regulation Section 102416.3(a)(1)(F).

The Department is changing the wording of this proposed regulation to clarify that it is the intent of the Department that the licensee must report when an area of the family child care home previously identified as "off limits" changes to an area "within limits," which is a location or area in which care and supervision is being provided. Upon the next licensing visit the Department shall be permitted to inspect the new, different, or additional areas of the home in which care is being provided. It is not the intent of the Department to expand its inspection authority to areas that have been identified as "off limits" and that have continued to remain "off limits" during the time that care and supervision is provided to children at the home.

6. Comment:

Section 102416.3(a)(2)

"CCLC understands the importance a physical environment that is safe for children, and supports thoughtful approaches to ensuring that family child care homes are safe. While we recognize the Department is experiencing significant budget constraints and is searching for approaches to accomplish its responsibilities without additional expenditures, it cannot legally transfer such tasks to local agencies. For that reason, this subsection is fatally flawed and we urge that it be withdrawn.

"As written, the regulation appears to be an impermissible delegation of authority to a local government, since it requires local building inspectors to approve or deny an element of a family child care home 'to ensure that no hazard to the health and safety of children exists.'. This is an attempt by the Department to have local building inspectors become responsible for reviewing something they may have no local authority to inspect, or may have no expertise in inspecting. For example, under the proposed regulations, the Department could require the licensee to have a new swing set inspected by a local building inspector to ensure that it presents no hazard to the health and safety of children. But local laws may not require inspection of swing sets, so inspectors may rightfully decline to inspect. Even if an inspector were to agree to conduct an inspection, that inspector may have none of the requisite expertise to know whether the construction presents a hazard to the children at the home. Similarly, if the local jurisdiction requires residents to obtain building permits or inspections for a garage conversion, that does not mean the local government inspects for the appropriateness of the garage for use in providing child care – rather, the Department is solely responsible for that determination.

"Under current law and regulation, the Department does not require any proof of local building code compliance or permitting as a condition of receiving a family child care home license. The Department is responsible for ensuring compliance with state health and safety standards, which do not include building standards, through inspections conducted by Licensing staff. The Department has authority to conduct its own regular inspections to ensure that facilities are not hazardous to the health and safety of children. The Department does not have authority to require a local jurisdiction to conduct such inspections, and should not attempt to impose such a

requirement through this proposed regulation. Given these serious flaws, we urge that the proposed regulation be withdrawn."

Response:

The Department would only impose this requirement in those instances where such an inspection is possible and appropriate. Accordingly, there is no illegal delegation, only an attempt to obtain cooperation of local officials with expertise with respect to building safety issues.

The Department also appreciates the comments and is changing the wording of this proposed regulation for clarification. It is not the intent of the Department to delegate additional authority to the local building inspector. However, when the Department is aware of an alteration, addition, or construction at a licensed child care facility, the Department may require the licensee to provide verification that the licensee's alteration, addition or construction has met the building safety requirements of the local entity with authority to inspect the building, alteration, addition, or construction. The intent is to require that a licensee provide documentation that any necessary permits have been obtained from the local jurisdiction for projects.

Rosie Kennedy, Family Child Care Services and Organizing Coordinator, United Child Care Union/AFSCME submitted the following comment: (Comment #7)

7. Comment:

"All forms, including a) LIC 9202: Family Child Care Consumer Awareness Information and b) Notification of Unusual Incidents to any child while in the care of a licensed Family Child Care Home, that require that the family child care provider maintain proof that he/she provided the document to parents/authorized representatives, should have a section on the bottom of each form for the parent's signature. The provider keeps this portion in the children's file.

"This is consistent with what's currently required of the family child care providers with forms such as LIC 995A: Family Child care Home Notification Parent's rights. This ensures consistency and avoids possible errors and oversights on the part of the provider potentially resulting in parents either not receiving all the required documents or the provider inadvertently failing to have all the necessary documentation resulting in avoidable citations, non compliance fees or other actions."

Response:

The Department appreciates the opportunity to address your comments.

PLEASE NOTE: Based on comments received during the period for public comment and testimony, revisions were made to the proposed regulations for clarity and consistency.

Former Section 102416.2(d) (now Subsection (e)) does not specify that the licensee shall maintain proof he/she provided the LIC 624B, Unusual Incident/Injury Report – Family Child Care Home, to the parent/authorized representative of the subject child, nor do they specify how an incident must be reported. However, for any incident that is reportable to the Department, the licensee is required to indicate the date the parents were notified on the LIC 624B, #12 or the letter used to notify the Department. These documents must be kept in the child's file. There is nothing that prohibits a licensee from obtaining signatures from parents or authorized representatives.

Section 102416.2(d) (now Subsection (f)) does require the licensee to report the unusual incident, injury or act to the parent/authorized representative no later than the same business day the event occurred.

The Department agrees with your recommendation to include the LIC 9212, Family Child Care Consumer Awareness Information on the LIC 995A, Family Child Care Home Notification of Parents Rights as having been received by the parent/authorized representative of the child in care. The form is currently undergoing revision to include the LIC 9212, Family Child Consumer Awareness Information on the LIC 995A, Family Child Care Home Parents Rights.

S. Alecia Sanchez, Senior Policy Advocate, Children's Advocacy Institute submitted the following comments: (Comments #8 - 9)

8. Comment:

Section 102416.2(b)

"Section 102416.2(b) requires a licensee to report changes in household composition, including 'adults moving in and out of the home.' The intent of this section is to help ensure that criminal background checks are completed for a specified group as required by Health & Safety Code Section 1596.871(b) to obtain the mandated safety clearance. This code section outlines a detailed process for obtaining security clearance for 'any person, other than a child, residing in a facility.' Specifically, it requires that a person who intends to reside in the home provide fingerprints and a statement signed under penalty of perjury regarding any prior criminal conviction prior to their residence. The proposed Section 102416.2(b) does little to help clarify or aid in the implementation of this requirement.

"Neither the statute nor the proposed regulation defines 'reside' for the purpose of obtaining a background check. This lack of definition leaves the discretion to the providers to determine when a person in the house would qualify as 'residing in the facility' and may create opportunities where the Department and licensee disagree about when the licensee has a new resident. Instead of restating the requirements of Health and Safety Code 1596.871(c), the proposed regulation should require further clarification of what constitutes 'residing.' We would prefer to err on the side of caution in establishing a short timeframe (we suggest two weeks) that triggers the reporting requirement, as the opportunity for harm to a child increases with time.

Response:

Please see the Department's response to Comment #4.

The Department appreciates the comment that proposed regulations should further clarify what constitutes "residing." The Department would like to receive notification when any adult is regularly present in the home and who has contact with the children during the time care and supervision is provided.

Without information as to all persons in the home who may be subject to the fingerprint and criminal background check requirements, the Department will be unable to determine compliance with Health and Safety Code Section 1596.871.

9. Comment:

Section 102416.3(a)(2)

"According to the Initial Statement of Reasons, this section 'establishes the Department's authority to require a licensee to obtain an inspection by a building inspector or a fire clearance.' Health and Safety Code 1596.82 already allows the Department 'to contract with state, county, or local agencies to assume specified licensing, approval, or consultation responsibilities.' Thus, the proposed regulation appears redundant to existing statute.

"It is also redundant of the local building permitting and inspection process, which require permits for many types of home alterations or additions and includes inspections. The Initial Statement of Reasons recognizes the existence of this mechanism by noting that many facility alterations have been completed without the required permits. However, the proposed regulations add another burdensome oversight layer that appears unnecessary. CAI agrees with the Department that ensuring proper construction contributes to the health and safety of the children in the facilities. However, the Department may want to consider establishing a process to ensure that the licensee has undertaken the proper steps at the local level. For example, it could require that a licensee provide documentation that any necessary permits have been obtained from the local jurisdiction for projects. The Department could then be assured that the proper steps have been taken to address building

requirements, but would not require the Department to decide what changes would require inspection. This responsibility would remain at the local level."

Response:

Please see response to Comments #5 and #6.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No written testimony on the modifications renoticed for public comment from December 23, 2005 to January 9, 2006 was received.